

Title 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 205 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, and 215 of said Code, proposes to amend subsection 27.82(a) and add sections 1.39, 1.49 and 27.83, Title 14, California Code of Regulations, relating to coastal pelagic species, highly migratory species, Cowcod Conservation Areas, California Rockfish Conservation Area, and restricted species and gear in the California Rockfish Conservation Area.

Informative Digest/Policy Statement Overview

Existing regulations define rockfish and lingcod management areas, and closure periods within these management areas. Management areas include the Cowcod Conservation Areas off southern California, and Northern, Central, and Southern Rockfish and Lingcod Management Areas off California. Existing regulations specify where and when rockfish, lingcod, California scorpionfish, and ocean whitefish may be taken and possessed within rockfish and lingcod management areas (Section 27.82, Title 14, CCR). Also, existing regulations specify the method of taking rockfish and lingcod (describe the number of hooks and lines, and define a hook) (sections 28.27 and 28.55, Title 14, CCR). In addition, current regulations define salmon (Section 1.73, Title 14, CCR), but do not define highly migratory species or coastal pelagic species.

Changes in groundfish regulations are being proposed by the Fish and Game Commission (Commission) to conform State regulations with federal groundfish rules that expand the boundary of the Cowcod Conservation Areas off southern California (will amend Subsection 27.82(a), Title 14, CCR). Proposed changes also create a California Rockfish Conservation Area (CRCA) off California in waters between 20 fathoms (120 feet) and 150 fathoms south of Point Reyes, Marin County, to the U.S.-Mexico border, and waters between 20 fathoms and 250 fathoms between Point Reyes and 40°10' N. lat. near Cape Mendocino, Humboldt County (adds new Section 27.83, Title 14, CCR). The change in the boundaries of the Cowcod Conservation Areas will incorporate additional areas of ocean waters that include depths to 150 fathoms occupied by cowcod. This action is directed at protecting the overfished stock of cowcod which is the subject of a federal rebuilding program. Creation of the CRCA and restrictions on the take of specified species (rockfish, lingcod, California scorpionfish, and ocean whitefish) and gear types in this area are directed at reducing bycatch mortality of overfished stocks of shelf rockfish, including bocaccio, cowcod, and canary rockfishes, in fisheries that target other than rockfish and lingcod.

The new regulations will restrict the take of rockfish, lingcod, California scorpionfish, and ocean whitefish within the CRCA. The regulations will also further regulate the type, size, and amount of fishing gear in the CRCA that has the potential to incidentally

take rockfish, including the take of rockfish as bycatch. Whitefish, while not groundfish, are found in association with shelf rockfish and, therefore, are restricted when rockfish and lingcod are restricted in order to avoid unnecessary bycatch mortality of overfished species of rockfish.

Hook-and-line sportfishing gear with more than one hook or lure and more than six ounces of weight attached is proposed to be restricted south of Cape Mendocino. Also, the proposed regulatory changes include several exceptions to the restrictions on hook and line gear. The exceptions are provided in order that anglers may continue to fish in a traditional manner for species such as salmon, California halibut, sanddabs, coastal pelagic species, and highly migratory species. These species are not generally found in association with rockfish and are prized by anglers for their game fish (fighting) and eating qualities in the case of salmon, California halibut, and highly migratory species; for their availability and authorized take in large numbers in the case of sanddabs (no daily bag limit); and for their use as bait fish in the case of coastal pelagic species. The proposed regulatory changes include the addition of definitions for highly migratory species and coastal pelagic species.

These regulatory changes were approved by the Pacific Fishery Management Council in September 2002 and are also being adopted as federal rules by the National Marine Fisheries Service. Final adoption of these sport fishing changes by the Commission is scheduled for its February 6-7, 2003 meeting to ensure consistency between, and the ability to enforce, California's sport fishing regulations for the CRCA in State waters (0-3 miles from shore) and regulations adopted for federal waters (3-200 miles from shore) for 2003.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Monterey Beach Resort Hotel, 2600 Sand Dunes Drive and Highway 1, Monterey, California on Thursday, December 5, 2002 at 10:00 a.m., or as soon thereafter as the matter may be heard

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Los Angeles/San Pedro (in a specific location to be determined following the December 6, 2002 meeting in Monterey), February 7, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before January 31, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than February 7, 2003, at the hearing in Los Angeles/San Pedro, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon

which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. LB Boydston, Intergovernmental Affairs Representative, Department of Fish and Game, phone (916) 653-6281, 1416 Ninth Street, Sacramento, CA 95814, and Don Schultze, Marine Region, Department of Fish and Game, phone (916) 227-5670, 1416 Ninth Street, Sacramento, CA 95814, have been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

Fishing regulations for rockfish and lingcod have become increasingly restrictive since 2000. This has stemmed from actions aimed at protecting and rebuilding overfished groundfish stocks. The proposed regulations continue that trend, and continue the trend of increasing adverse impact on businesses that depend on those and associated fishery resources. The affected businesses include commercial fishing operations, the operations of commercial passenger fishing vessels, and the shoreside businesses that support those activities. However, the restrictions have not affected the ability of California businesses to compete with businesses in other states as the restrictions have been applied (to varying degree) coast wide.

The Commission has made an initial determination that the adoption/amendment of these regulation may have a significant statewide adverse economic impact on businesses. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
 - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
- The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: November 26, 2002

John M. Duffy
Assistant Executive Director